

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TOUCHPOINT SOLUTIONS, INC.,

Plaintiff,

vs.

EASTMAN KODAK COMPANY,

Defendant.

# AFFIDAVIT

04-11014 DPW

STATE OF NEW YORK )  
: ss.  
COUNTY OF MONROE )

THOMAS A. PINKHAM, being duly sworn, deposes and says:

1. I have been an employee of Eastman Kodak Company (“Kodak”) since 1985. During 2003-2004, I was a Kodak Commercialization Manager for the Kodak Picture Maker Product Line. In that position I worked at Kodak’s corporate headquarters, which are located in Rochester, New York. (Kodak’s corporate headquarters include the office of the Kodak general counsel).

2. The Kodak Picture Maker Line includes Kodak photo kiosks that are located throughout the United States, and around the world, in various locations, including retail outlets such as drug stores and grocery stores.

3. During (and before) 2003, Kodak was considering using software that would allow Kodak to monitor and help manage its photo kiosks remotely from a centralized location. Kodak hoped that such remote management software would increase the efficiency and profitability of the kiosks by, among other things, identifying and resolving operational issues

- 2 -

(such as lack of printing paper and printing solutions) before those problems interfered with the kiosk's operations.

4. While Kodak was considering remote management of photo kiosks, TouchPoint Solutions, Inc. ("TouchPoint") approached Kodak regarding the possibility of licensing TouchPoint software that, according to TouchPoint, could be used for the remote management of Kodak kiosks. I understand that this initial TouchPoint approach to Kodak occurred sometime in early 2003.

5. During the period March 2003 through April 2004, there were discussions and meetings between Kodak and TouchPoint representatives as they worked on determining whether the TouchPoint software could provide for the effective and profitable remote management of Kodak kiosks, and whether a mutually acceptable licensing agreement could be reached. I was one of the Kodak representatives involved in that process, including Kodak's assessment of the TouchPoint proposal and negotiations with TouchPoint.

6. Ultimately, Kodak concluded – and informed TouchPoint – that Kodak was unwilling to go forward with licensing the TouchPoint software on the terms and conditions proposed by TouchPoint. I was involved in that decision by Kodak. The decision was made in Rochester, New York. The ultimate decision maker in this regard was Kent McNeley, who was at the time a Kodak corporate vice president, but is no longer a Kodak employee. I understand Mr. McNeley continues to reside in Monroe County, which I am informed is within the Western District of New York ("WDNY").

7. I and most of the other Kodak personnel who were involved in this TouchPoint project work at Kodak offices located in Rochester, New York and live in or around Rochester,

- 3 -

within the WDNY. A limited number of Kodak employees who were also involved in this project work at Kodak facilities located in Atlanta, Georgia. The Kodak employee based in Atlanta with the most significant involvement with the TouchPoint matter is Scott Auer. He regularly travels to Rochester to meet with Kodak colleagues. With the exception of Mr. Auer and Mr. McNeley, who is no longer a Kodak employee but continues to live within the WDNY, the Kodak “decision makers” involved with TouchPoint continue to work in Kodak’s Rochester offices within the WDNY.

8. I, and various of my Kodak colleagues, had numerous contacts with various TouchPoint representatives. To the best of my knowledge and understanding all or almost all of the TouchPoint employees with whom Kodak dealt worked out of TouchPoint’s offices located in Toronto, Ontario, Canada. TouchPoint’s website indicates those offices are its “operational headquarters” (<http://www.touchpointsolutions.com>). Those offices are located at 5180 Orbitor Drive, Toronto, Canada, although TouchPoint sometimes provided an address of 5180 Orbitor Drive, Mississauga, Ontario, Canada. I understand Mississauga is a Toronto suburb.

9. To the extent Kodak-TouchPoint contacts during 2003-2004 involved face-to-face meetings, to the best of my knowledge, all or almost all of those meetings occurred in Rochester, Toronto, and Atlanta, Georgia. There were also internal Kodak communications and meetings regarding TouchPoint. To the best of my knowledge and understanding, most of those internal Kodak meetings and communications occurred within the WDNY, although some involved Kodak employees in Atlanta, Georgia.

- 4 -

10. I list below various Kodak employees who were involved with TouchPoint, together with a brief description of what I understand was the nature of their involvement, and I indicate in parentheses where they work.

Scott Auer	Together with Tom Pinkham, succeeded Steve Pellow as manager of Kodak-TouchPoint relationship. Involved in negotiations of possible license agreement with TouchPoint. (Atlanta, Georgia)
Steve Facticeau	Kodak employee involved in service and support issues concerning TouchPoint proposal. (Rochester, New York)
Richard Gary	In charge of Kodak service support business. Involved with assessing TouchPoint's proposal and analysis of remote monitoring for kiosks. (Rochester, New York)
Douglas Hunt	Kodak Worldwide Service Support Manager, involved in technical discussions with TouchPoint. (Rochester, New York)
Mike Malec	Kodak software engineer involved in technical discussions with TouchPoint. Drafted Kodak "Products Requirement Document: Kiosk Remote Management System." (Rochester, New York)
Kent D. McNeley	Former vice president and general manager of Kodak Consumer Output Strategic Products Group. Oversaw negotiations with TouchPoint. Involved in final Kodak decision not to accept TouchPoint's proposed license agreement. Signed Kodak-TouchPoint Confidential Disclosure Agreement and Non-Circumvention Agreement. No longer employed by Kodak.
John Metzger	Member of Kodak Purchasing Group. Involved in negotiation of possible license agreement with TouchPoint. Signed Kodak-TouchPoint Professional Services Agreement. (Rochester, New York)
Charles Novak	Kodak employee involved in assessing test results for remote monitoring of kiosks. (Atlanta, Georgia)

- 5 -

Steve Pellow	Kodak Product Manager. Managed various aspects of Kodak dealings with TouchPoint. (Rochester, New York)
Neil Pitts	Kodak Information technology employee. Involved with technical discussions with TouchPoint. (Rochester, New York)
Heath Ponstein	Kodak employee involved in testing remote management software for kiosks. (Atlanta, Georgia)
Cheri Thuotte	Kodak employee. Involved in discussing software aspects of TouchPoint proposal and Kodak needs. (Rochester, New York)

11. I list below various TouchPoint employees who were involved with Kodak, together with my understanding of their responsibilities and, in parenthesis, to the best of my understanding, where they worked.

Grant Duxbury	Former TouchPoint employee, member of TouchPoint technology team involved in discussions with Kodak. (Toronto, Canada)
Bevan Hayes	TouchPoint employee involved with Kodak technical discussions. (Toronto, Canada)
Shamira Jaffer	TouchPoint Executive Vice President. Involved in discussions with Kodak. (Toronto, Canada)
Anila Jobanputra	President of TouchPoint. Involved in negotiations of possible license agreement between Kodak and TouchPoint. Signed Kodak-TouchPoint Confidential Disclosure Agreement, Non-Circumvention Agreement and the Professional Services Agreement. (Toronto, Canada)
Asad Jobanputra	Member of TouchPoint technology team involved in discussions with Kodak.
Edward McGowan	Apparent member of TouchPoint Board of Directors. Involved in negotiations of possible license agreement between Kodak and TouchPoint.

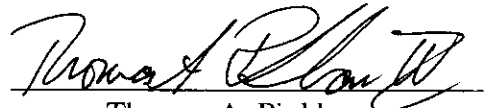
- 6 -

John C. Raby

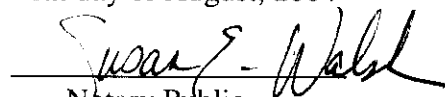
Investor in TouchPoint and member of TouchPoint board of directors. Involved in negotiations of possible license agreement between Kodak and TouchPoint. I believe he was generally in Toronto while involved in negotiations with Kodak. (According to the TouchPoint website, his offices are located in Newport, Rhode Island).

12. I am unaware of any activity that occurred within Massachusetts in connection with Kodak-TouchPoint dealings.

13. I attach as Exhibit A a copy of the Confidential Disclosure Agreement, which I understand is referred to in the TouchPoint complaint. I attach as Exhibit B a copy of the Professional Services Agreement, between TouchPoint and Kodak, dated March 22, 2004. I attach as Exhibit C a copy of a draft of the Master Software License Agreement, without its appendices. Kodak and TouchPoint did not enter that agreement.

  
Thomas A. Pinkham

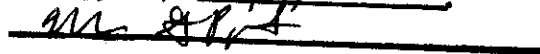
Sworn to before me this  
11th day of August, 2004

  
Notary Public

SUSAN E. WALSH  
Notary Public, State of New York  
Monroe County  
Commission Expires July 13, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was  
served upon the attorney of record for each other party  
by mail (by hand) on 8/13/04



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